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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B5

DATE: OCT 04 2011 OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director then reopened the proceeding on the director's motion, and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a postdoctoral research fellow at the Harvard School of Public Health, Boston, Massachusetts. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On appeal from the director's decision, the petitioner submits dozens of exhibits, all of them previously submitted, as well as a 50-page brief. On the Form I-290B Notice of Appeal, counsel presents a capsule summary of the arguments in the appellate brief.

Review of the appellate brief shows that counsel made nearly all of the same arguments in the earlier motion. The appellate brief is, therefore, almost entirely a direct copy of a brief that pre-dates the present denial. The brief is not a response to the denial if it preceded that denial.

Submission of the two identical briefs in response to two identical decisions might be understandable, but such is not the case here. While counsel's briefs on motion and on appeal are virtually identical, the director's two denial decisions (dated March 2 and July 13, 2010) are quite distinct from one another.

The appellate brief contains only one substantive paragraph that counsel did not simply copy from the earlier brief. In that paragraph, on pages 7-8 of the brief, counsel states:

After quoting all the specific evidence submitted [with] the petition, [the director] still states that "The petitioner has merely shown that he authored or coauthored nine research publications that have been well received by some researchers, through their supporting letters." . . . The Service [Center] Director does not reason why all the specific evidence, including but not limited to, the professional media reports, the ScienceDirect report that [the petitioner's] first-author paper was recognized to be the **"No.1 of the Top 25 Hottest Articles"** in the field, the geographic presentation of the independent scientists who cited [the petitioner's] papers as authoritative, etc., are not

sufficient to prove that [the petitioner's] work has some degree of influence on the field as a whole.

In the denial notice, the director stated that witness letters, while "not without weight," "cannot form the cornerstone for a successful claim" for the national interest waiver. The director had previously cited *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988), which indicates that expert witness letters are not presumptive evidence of eligibility. The director found that the petitioner had not submitted sufficient documentary evidence to support the claims in the letters. The director acknowledged the citation of the petitioner's published work, but found that the petitioner had not shown this citation rate to distinguish the petitioner from others in his field.

Counsel states that the director did not give sufficient weight to "the ScienceDirect report that [the petitioner's] first-author paper was recognized to be the **"No.1 of the Top 25 Hottest Articles"** in the field." The director acknowledged the petitioner's submissions in this regard, but found that "it is upon the petitioner to prove that these achievements deserve a waiver of the labor certification." The record shows that counsel has mischaracterized the ScienceDirect listing. The material in the record is not a "report" that the petitioner's paper was one of the "'Top 25 Hottest Articles' in the field." Rather, ScienceDirect listed the "Top 25 Hottest Articles" that had appeared in one particular journal (*Applied Ergonomics*). The list is dated "October to December 2007," indicating that ScienceDirect compiles the list on a quarterly basis. The printout does not explain how the "hottest articles" are selected. Review of the list shows lopsided inclusion of the most recent articles. Eleven of the 25 articles, including the petitioner's, are from the January 2008 issue of *Applied Ergonomics*, representing 108 of the first 121 pages of that issue. Six other articles are from the November 2007 issue. It is natural that newly published articles would, at least temporarily, attract the most attention, at least until the next issue appeared. The director justifiably questioned the importance of this list, and counsel, on appeal, offers no response except to claim, incorrectly, that the list shows the "hottest articles in the field," when it actually deals with articles in a single journal, mostly from two issues thereof.

On consideration, the AAO finds that the one new paragraph buried in a redundant 50-page brief is not sufficient basis for a substantive appeal and *de novo* review of the entire petition. Counsel's refusal to accept the director's conclusions about the petitioner's evidence does not mean that the director failed to consider that evidence. Counsel's mischaracterization of the "Top 25 Hottest Articles" list, whether intentional or inadvertent, gravely undermines the assertion that counsel has devoted more care than the director to consideration of the evidence.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.